IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 30 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
APOLLO CONSTRUCTION CO.P.LTD. - Opponent(s)

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Appearance :
MR. MANISH R. BHATT for Applicant(s).
NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 01/11/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad Bench `A', at the instance of the Revenue, has referred

the following question of law for opinion of this Court under Section 256(1) of the Income Tax Act, 1961 (`the Act' for short), which arises out of the final judgement delivered in I.T. Appeal Nos.2922, 2923 & 2924/Ahd/19992 pertaining to Assessment Years 1985-86, 1986-87 and 1987-88.

> *"Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the Commissioner of Income-tax (Appeals) directing the Assessing Officer to grant deduction under section 80-HH and 80-I of the Act?"*

2. The Assessing Officer did not allow the simultaneous benefits flowing from Sections 80HH and 80-I of the Act, therefore, the matter was taken up in appeal. The Appellate Court/Commissioner of Income-Tax (Appeals) directed the Assessing Officer to grant deductions under Sections 80HH and 80-I of the Act. The Revenue, being aggrieved by the said order, took up the matter in appeals and after losing in the said appeals, made an application under Section 256(1) of the Act. Accordingly, the Reference was made on the above referred question.

3. Shri Bhatt, learned Counsel for the Revenue, submitted that the Tribunal was not justified in holding that the simultaneous benefits flowing from Sections 80HH

and 80-I were available to the Assessee.

4. We have heard Shri Bhatt and as none appears for the other side, we are proceeding *ex parte* against the respondent. Section 80HH of the Act refers to deduction in respect of profits and gains from newly established industrial undertakings or hotel business in backward areas, while Section 80-I of the Act relates to deduction in respect of profits and gains from industrial undertakings after certain date, etc. For appreciation of the question referred to us, we go straightway to Sub.section-9 of Section 80HH of the Act, which reads as under:

> *"In a case where the assessee is entitled also to the deduction under section 80-I or section 80J in relation to the profits and gains of an industrial undertaking or the business of a hotel to which Section 80HH applies, the effect was to be first given to the provisions of Section 80HH''.*

A perusal of Sub.section-9 would make it clear that where the assessee is entitled to benefits under Section 80HH and under Section 80-I/80J, the effect was to be first given to the provisions of Section 80HH. The first application of Section 80HH would not oust

application of Section 80-I or Section 80J. Section 80HH and Section 80-I/80J are not mutually exclusive or destructive of each other, but, under the Act, preference is to be given to the application of Section 80HH, only thereafter Section 80-I or Section 80J shall be applied. The same is the view of this Court in the matter of ***Commissioner of Income-Tax vs. Sidhpur Isabgul Processing Co. Ltd.*** [***252 ITR 777***].

5. In view of the aforesaid discussion, we hold that the Appellate Tribunal was right in law and on facts in confirming the order passed by the CIT (Appeals) directing the Assessing Officer to grant deduction under Sections 80HH and 80-I of the Act. The Reference is, accordingly, answered in favour of the Assessee and against the Revenue. It stands disposed of. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]

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